

**No. PD-1248-19**

IN THE  
TEXAS COURT OF CRIMINAL APPEALS

RECEIVED  
COURT OF CRIMINAL APPEALS  
10/13/2021  
DEANA WILLIAMSON, CLERK

**CHRISTOPHER SIMMS,  
APPELLANT,**

**v.**

**THE STATE OF TEXAS,  
APPELLEE.**

ON PDR FROM THE FIRST  
COURT OF APPEALS

**AMICUS CURIAE BRIEF BY DISTRICT ATTORNEY FOR THE  
105<sup>TH</sup> JUDICIAL DISTRICT OF TEXAS  
IN SUPPORT OF MODIFYING OPINION**

Douglas K. Norman  
State Bar No. 15078900  
Assistant District Attorney  
105<sup>th</sup> Judicial District of Texas  
901 Leopard, Room 206  
Corpus Christi, Texas 78401  
(361) 888-0410  
(361) 888-0399 (fax)  
douglas.norman@nuecesco.com

Attorney for Amicus Curiae

## **STATEMENT OF COMPLIANCE WITH TEX. R. APP. P. 11**

The present amicus curiae brief is filed by the District Attorney's Office for the 105<sup>th</sup> Judicial District of Texas, in accordance with the requirements of Texas Rule of Appellate Procedure 11. No fee has been paid or will be paid for the preparation of this brief. The certificate of service attached to the back page of this brief certifies that copies have been mailed to all parties.

## TABLE OF CONTENTS

STATEMENT OF COMPLIANCE WITH TEX. R. APP. P. 11 .....	2
INDEX OF AUTHORITIES .....	4
ARGUMENT .....	5
CONCLUSION .....	7
RULE 9.4 (i) CERTIFICATION .....	7
CERTIFICATE OF SERVICE .....	8

## INDEX OF AUTHORITIES

### Cases

<i>Rodriguez v. State</i> , 538 S.W.3d 623 (Tex. Crim. App. 2018) .....	5
---	---

NO. PD-1248-19  
(Appellate Court Cause No. 01-18-00539-CR)

Christopher Simms,	§	IN THE	
Appellant,	§		
	§		
V.	§	COURT OF CRIMINAL	
APPEALS			
	§		
THE STATE OF TEXAS,	§		
Appellee.	§	OF TEXAS	

**AMICUS CURIEA’S BRIEF IN SUPPORT OF MODIFYING  
OPINION**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

**ARGUMENT**

**Did the Court of Criminal Appeals intend in its present opinion to overrule *sub silentio* its prior holding in *Rodriguez v. State*, 538 S.W.3d 623 (Tex. Crim. App. 2018), that the element of “serious bodily injury” that elevates simple assault to aggravated assault carries no independent culpable mental state, or should its opinion in the present case be modified to eliminate such confusion?**

Three years ago, in *Rodriguez v. State*, 538 S.W.3d 623 (Tex. Crim. App. 2018), this Court clearly held that aggravated assault does not require proof of a culpable mental state with respect to the element of “serious bodily injury,” concluding that it was enough to show that the defendant intentionally, knowingly, or recklessly caused “bodily injury,” even if he did not act intentionally, knowingly, or recklessly with regard to the resulting “serious bodily injury.”

Yet, the present opinion in *Simms* contains the following statements that would cast doubt on this holding:

We begin by comparing the elements of the charged aggravated assault to the elements of deadly conduct. As alleged here, to find Appellant guilty of aggravated assault, the jury had to conclude that he *recklessly caused Pineda serious bodily injury* by failing to control his speed, failing to maintain a single lane of traffic, or failing to keep a proper lookout.

*Simms* - 7 (emphasis added)

To find Appellant guilty of aggravated assault as charged, the jury would have had to find that he was *reckless with respect to the result—Pineda’s serious bodily injury*—caused by one or more of the alleged manner and means (failing to control speed, failing to maintain a single lane, or failing to maintain a proper lookout).

*Simms* - 8 (emphasis added)

But to support aggravated assault, the jury would have to conclude that he was *reckless with respect to the result of his actions in actually causing Pineda’s serious bodily injury*.

*Simms* - 9 (emphasis added)

Under this view of the evidence, it would be rational to find Appellant guilty of deadly conduct for his reckless speeding, but not guilty of aggravated assault because he would lack the required culpable mental state of *recklessness regarding the result of the collision, Pineda’s serious bodily injury*. See TEX. PENAL CODE §§ 22.01(a)(1), 22.02(a)(1) (defining offense of aggravated assault for *recklessly causing serious bodily injury*); ....

*Simms* - 10-11 (emphasis added)

Such statement are unnecessary to the present holding in *Simms*, which appears to turn on the issue of causation rather than the mental state

necessary for aggravated assault, yet they clearly sow the seeds of confusion concerning the very issue of the required mental state for aggravated assault.

### **CONCLUSION**

The District Attorney's Office for the 105<sup>th</sup> Judicial District of Texas submits the foregoing Amicus Curiae Brief for the Court's consideration in the present case.

Respectfully submitted,

/s/ *Douglas K. Norman*

---

Douglas K. Norman  
State Bar No. 15078900  
Assistant District Attorney  
105<sup>th</sup> Judicial District of Texas  
901 Leopard, Room 206  
Corpus Christi, Texas 78401  
(361) 888-0410  
(361) 888-0399 (fax)  
douglas.norman@nuecesco.com

### **RULE 9.4 (i) CERTIFICATION**

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in this brief, excluding those matters listed in Rule 9.4(i)(1), is 463.

/s/ *Douglas K. Norman*

---

Douglas K. Norman

## **CERTIFICATE OF SERVICE**

This is to certify that copies of this brief were e-served on October 11, 2021, on the attorney for Mr. Christopher Simms, Mr. Allen Isbell, at [allenisbell@sbcglobal.net](mailto:allenisbell@sbcglobal.net), the attorney for the State, Mr. Chris Conrad, at [conrad\\_chris@dao.hctx.net](mailto:conrad_chris@dao.hctx.net), and the State Prosecuting Attorney, at [Stacey.Soule@SPA.texas.gov](mailto:Stacey.Soule@SPA.texas.gov).

/s/ *Douglas K. Norman*

---

Douglas K. Norman



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Douglas Norman  
Bar No. 15078900  
douglas.norman@nuecesco.com  
Envelope ID: 58049808  
Status as of 10/13/2021 11:44 AM CST

Associated Case Party: CHRISTOPHER SIMMS

Name	BarNumber	Email	TimestampSubmitted	Status
Allen Isbell		allenisbell@sbcglobal.net	10/11/2021 9:02:36 AM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule	24031632	information@spa.texas.gov	10/11/2021 9:02:36 AM	SENT
Daniel McCrory		MCCRORY_DANIEL@dao.hctx.net	10/11/2021 9:02:36 AM	SENT
Chris Conrad		conrad_chris@dao.hctx.net	10/11/2021 9:02:36 AM	SENT
Stacey Soule		Stacey.Soule@SPA.texas.gov	10/11/2021 9:02:36 AM	SENT